

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
EASTERN DIVISION

FILED BY lr D.C.

05 APR 22 PM 2:42

LARRY STEVE MELTON, LARRY S. MELTON
R & J of TENNESSEE, INC.,

ROBERT R. DI TROLIO
CLERK OF U.S. DIST. CT.
W.D. OF TN. JACKSON

Plaintiffs,

v.

No. 02-1152-B

BANK OF LEXINGTON branch of the
BANK OF FRIENDSHIP, et al.,

Defendants.

ORDER DENYING PLAINTIFF LARRY S. MELTON'S MOTION TO STAY

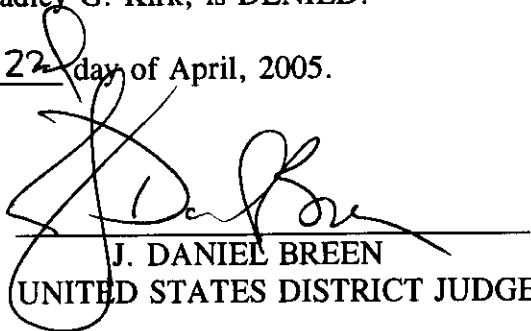
Before the Court is the March 10, 2005, motion of the Plaintiff, Larry S. Melton, (Docket Entry No. 559) to stay this Court's order granting the motion of the Defendant, Bradley G. Kirk, to set aside default. The Court's order, entered on February 28, 2005, determined that setting aside the default entered previously against Bradley G. Kirk, would not be prejudicial to the Plaintiff and that the Defendant may in fact have a meritorious defense to the Plaintiff's cross-claim based upon the pending motion to dismiss. The Court further concluded that there was good cause for the setting aside of the default and that at worst, Kirk was guilty of only excusable neglect for not filing an answer which would not prevent this Court's setting aside of the default.

The Court would note that the Plaintiff has filed, at the same time he requested the stay, a notice of appeal of this Court's determination. As it previously found in another order denying the Plaintiff's request for an appeal, see Docket Entry No. 567, the order to set aside default is not a final order and is not subject to an appeal as an order which would "materially advance

the ultimate termination of the litigation." See 28 U.S.C. §1292(b). In the same regard, the Court concludes that the order setting aside of the default does not warrant a stay of the proceedings in this case and although the Plaintiff has attempted to appeal this order, it is doubtful that he will be successful. Such an appeal, as well as other interim orders entered by this Court in this litigation, may be the basis of an appeal when this litigation is finally concluded.

Accordingly, for the foregoing reasons, Plaintiff's motion for a stay as to the setting aside of the default against Defendant Bradley G. Kirk, is DENIED.

IT IS SO ORDERED this 22 day of April, 2005.



J. DANIEL BREEN
UNITED STATES DISTRICT JUDGE



Notice of Distribution

This notice confirms a copy of the document docketed as number 569 in case 1:02-CV-01152 was distributed by fax, mail, or direct printing on April 26, 2005 to the parties listed.

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Honorable J. Breen
US DISTRICT COURT